

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANCISCO ALVARADO SANTOS,

Defendant.

4:13-CR-3078

ORDER

This matter is before the Court on the defendant's motion for appointment of counsel (filing [74](#)). That motion will be denied.

The defendant is seeking the appointment of counsel to assist him in obtaining a sentence reduction pursuant to [18 U.S.C. § 3582\(c\)\(2\)](#) and U.S.S.G. Amend. 782. But there is no constitutional right to appointed counsel in sentence modification proceedings under § 3582(c). *United States v. Harris*, [568 F.3d 666, 669 \(8th Cir. 2009\)](#). Nor does the defendant have a right to appointed counsel under the Criminal Justice Act, [18 U.S.C. § 3006A. Harris](#), [568 F.3d at 669](#). Whether to appoint counsel is, therefore, committed to the discretion of the Court. *See id.* And the Court declines to appoint counsel in this case because it is apparent that the motion the defendant wants to file would be without merit.

U.S.S.G. § Amend. 782 was effective November 1, 2014. The defendant was sentenced on April 14, 2015. Filing [72](#). And the Court uses the Guidelines Manual in effect on the date the defendant is sentenced. [U.S.S.G. § 1B1.11\(a\)](#). Accordingly, the defendant was sentenced pursuant to the *amended* Guidelines—Amendment 782's two-level reduction had already taken effect and was applied to him at sentencing. Filing [70](#) at 13-14, 22; filing [71](#); filing [73](#) at 1. He is entitled to no further reduction. Accordingly, any motion for a sentence reduction based on Amendment 782 would be without merit, and there is no basis for appointing counsel.

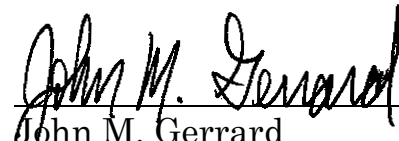
IT IS ORDERED:

1. The defendant's motion for appointment of counsel (filing [74](#)) is denied.

2. The Clerk of the Court shall send a copy of this memorandum and order to the defendant at his last known address.

Dated this 6th day of October, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge